RECENT CASES.

Aerolite—Ownership—Appropriation by Finder.—Goodard v. *Winchell*, 52 N. W. Rep. 1124 (Iowa).—Action in replevin. The subject of the controversy was an aerolite, which falling from the sky was imbedded in the soil to a depth of three feet. It was held to be the property of the owner of the land on which it falls, rather than the one who finds it and digs it up, and that the rule that the owner of lost goods is entitled thereto, except as against the true owner, is not applicable in such a case. On appeal to the Supreme Court the decision of the District Court was affirmed. In this case the appellant insisted that the enlightened demands of the times in which we live call for, if not a modification, a liberal construction of the ancient rule "that whatever is affixed to the soil belongs to the soil" referring to Blackstone that "occupancy is the taking of those things which before belonged to nobody" and "whatever movables are found upon the surface of the earth * * * and are unclaimed by any owner are supposed to be abandoned by the last proprietor and as such are returned into the common stock and mass of things, and therefore they belong as in a state of nature to the first occupant or finder." But the court, by Mr. Justice Granger, held that it had none of the characteristics of the property contemplated by this rule—that the rule sought to be avoided has reference to what becomes a part of the soil and not to an acquisition of property existing independent of other property. The term "movables" must not be construed to mean that which can be moved but means such things as are not parts of the earth naturally but exist on it. Animals exist on the earth but are not in a proper sense part of it. "To take from the earth what nature has placed there in its formation, whether at the creation or through the natural processes of the acquisition and depletion of its particular parts, as we witness it in our daily observations, whether it be the soil proper or some natural deposit, as of vegetable or mineral

matter, is to take a part of the earth and not movables." If meteors are exchanged who can say what part of the earth belongs to the "unowned things" and thus the property of the finder instead of the land owner? The rule of the finder of lost property in this case is doubtful. The aerolite was never lost or abandoned. Whence it came is not known but it became a part of the earth and should be taken as such.

Damages — Consequential Injury to Business.— Swain v. *Schieffelin et al.*, 21 N. E. Rep. 1025 (New York). The defendants sold a bottle of "carlet red" of their own manufacture to the plaintiff, representing it to be absolutely pure and harmless. Defendants knew that plaintiff was a manufacturer of ice-cream and ices, and that the "carlet red" was to be used to give color to these products. The coloring matter was used, the ice-cream sold to customers, and, in some cases, eaten. The result was illness in some forty families, an analysis of the coloring matter and the discovery that it contained arsenic. The court held that recovery could be had for the loss of cream which was destroyed when the nature of the "carlet red" became known, and also for injury to business through a loss of trade resulting from the use of the poisonous coloring matter. The case is valuable owing to the careful manner in which the rule of consequential damages is enunciated. The court approves *Wakeman* v. *Manufacturing Co.*, 101 New York 205, where it is said: "A person violating his contract should not be permitted entirely to escape liability because the amount of the damages which he has caused is uncertain. It is not true that loss of profits cannot be allowed as damages for a breach of contract. Losses sustained and gains prevented are proper elements of damage." The following quotations will tend to show the rules applied by the court in the case before it: "When one violates his contract or his duty to another, the theory of the law is that compensation shall be made for the injury directly and proximately caused by the breach of contract or duty. * * * In case a manufacturer of goods sells them to a purchaser to be used for a particular purpose, which is known by the vendor at the time of the sale, a more liberal rule prevails than in cases where like articles are sold as merchandise, for general purposes. In the former case profits lost and expenses incurred may be recovered. This broader rule rests on the theory that the vendor, having sold the articles with the knowledge that they were purchased for a particular purpose, should be held liable for such damages as naturally flow from the breach of his